INDEX

Page

Jurisdiction 2
Additional and Enlarged Substantial Question Presented 2
Constitutional Provision Involved 2
Additional Statement of the Case 2
Reasons for Granting Rehearing 4
Conclusion 7
Certificate of Good Faith 8

TABLE OF CASES

In re Schlesinger, 404 Pa 584, 182 A2d 835, 840 (1963) 6
In the Matter of Samuel Winship, US
(Decided March 31, 1970) 5,6
Woodby v. Immigration and Naturalization Service,
385 US 276 5

CONSTITUTIONAL PROVISION, STATUTES, AND RULES

United States Constitution:
Fourteenth Amendment, Section 1 2,4,6
Rule 58(2), Rules of the Supreme Court, 1967 2
Title 14, Section 377, Code of Alabama, 1940 4
Rule 22, Section B, Rules of Alabama State Bar 2

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

NO. 1518

J. ROBERT HUIE,

Petitioner

vs.

BOARD OF COMMISSIONERS OF THE ALABAMA STATE BAR,

Respondent

PETITION FOR REHEARING

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, J. ROBERT HUIE, prays that he be granted a rehearing in this cause to review the order or judgment of the Supreme Court of the United States of June 22, 1970, which denied to him a writ of certiorari to be issued out of and under the seal of this Court to review the judgment of the Supreme Court of Alabama entered on January 8, 1970, which judgment resulted in the disbarment of petitioner by way of affirmance of an order of the Board of Commissioners of the Alabama State Bar on March 3, 1967.

JURISDICTION

This petition is submitted pursuant to Rule 58(2), Rules of the Supreme Court of the United States, 1967.

ADDITIONAL AND ENLARGED SUBSTANTIAL QUESTION PRESENTED

In disbarment proceedings, does an evidentiary standard utilized by the trier of fact of being "reasonably satisfied" from the evidence comport with that due process guaranteed by the Fourteenth Amendment, United States Constitution?

CONSTITUTIONAL PROVISION INVOLVED

That portion of the Fourteenth Amendment, United States Constitution, Section 1, as follows:

"***nor shall any State deprive any person of life, liberty, or property, without due process of law;***"

ADDITIONAL STATEMENT OF THE CASE

The substantial question stated above, and which was merely sketched in on the original petition for writ of certiorari (G, pp. 23-24), must be placed in the proper context relative to disciplinary proceedings in Alabama.

Section B, Rules Providing a Method of Procedure to be Followed in the Investigation and Trial of Complaints Concerning the Professional Conduct of Attorneys in Alabama, provides (Rule 22):

"DEGREE OF PROOF REQUIRED

> "The rules of evidence and the degree of proof applicable to civil cases shall apply to all cases before the Board." (*i.e.*, The Board of Commissioners of the Alabama State Bar, the original trier of fact.)

The Board of Commissioners of the Alabama State Bar in entering its judgment of disbarment did not state what, if any, qualtitative standard of proof was utilized in its

BLEED THROUGH POOR COPY

determination that petitioner was guilty of all charges presented against him by the Grievance Committee of the Board.

The Supreme Court of Alabama, however, did in its opinion (Appendix, p. All) clearly state:

> "From the evidence summarized above, we are *reasonably satisfied* that George E. Anderson was a resident of New Jersey and was not a resident of Alabama in December, 1964, ***"
>
> "The finding stated above is sufficient to support the judgment of guilt on Charges 7, 8, and 9, and the punishment of disbarment."

An examination of Charge Eight is now most pertinent:

CHARGE EIGHT
(Violation of Rule 16, Section A)

> "On, to-wit, January 27, 1965, the said attorney did submit to the Circuit Court, Tenth Judicial Circuit of Alabama, a divorce case, namely *George E. Anderson vs. Loretta A. Anderson*, in Equity, Case No. 137-515, wherein the Bill of Complaint and deposition of complainant represented to the Court that Complainant was a bona fide resident of the State of Alabama, when, in truth and in fact, the said attorney knew that neither the complainant nor the respondent was a bona fide resident of the State of Alabama.
>
> "The Grievance Committee charge that in doing the above described acts, the said attorney was guilty of violating or failing to comply with Rule 16, Section A of the Rules Governing the Conduct of All Persons Admitted to the Practice of Law in the State of Alabama, said Rule providing:
>
> > 'No person heretofore or hereafter admitted to practice law in Alabama, shall . . .

> '16. Introduce or offer to introduce any testimony which he knows to be false or forged'."

The criminal statutes of Alabama are explicit in regard to the matters delineated in this Rule:

"Title 14, Section 377, Code of Alabama, 1940:

> "Perjury and subornation in other cases.
>
> "Any person who wilfully and corruptly swears or affirms falsely, or corruptly procures another to so swear or affirm, in regard to any material matter or thing, upon any oath or affirmation authorized by law, except on the trial of any person under an indictment for a felony, shall, on conviction, be imprisoned in the penitentiary for not less than two nor more than five years."

In his Application for Rehearing presented to the Supreme Court of Alabama, petitioner stated that "the entry of said judgment *** was *** a denial of that due process guaranteed by the Fourteenth Amendment, United States Constitution."

Petitioner J. ROBERT HUIE submits the question of evidentiary standards in disciplinary proceedings conducted by a State was properly raised below.

REASONS FOR GRANTING REHEARING

A.

EVIDENTIARY STANDARDS IN DISBARMENT PROCEEDINGS SHOULD OF CONSTITUTIONAL RIGHT BE HIGHER THAN THOSE APPLICABLE TO CIVIL PROCEEDINGS

At the time of the preparation and submission of the petition for writ of certiorari to this Court, petitioner J.

ROBERT HUIE was not fully cognizant of In the Matter of *Samuel Winship,* US (Decided March 31, 1970).

There are striking parallels in the factual bases of that case and the one at bar.

Juvenile delinquency hearings are not denominated "criminal"; and we may concede *arguendo* that a disbarment proceeding is not "criminal". It is noted, however, that the Supreme Court of Alabama stated that disbarment is punishment, with which characterization petitioner is in wholehearted accord.

In both *Winship* and the case at bar, as has been noted, the one proceeded against was accused basically of a criminal act. That act here was forgery or subornation of perjury, as was spelled out in Charge Eight.

Furthermore, petitioner notes that higher evidentiary standards than those applicable to civil cases may also apply to proceedings which, in essence, do not involve any criminal aspect whatsoever, but only a moral one. See *Woodby v. Immigration and Naturalization Service,* 385 US 276.

Petitioner J. ROBERT HUIE, therefore, argues as follows from *Winship:*

(1). The characterization of disbarment proceedings as "civil" or "quasi-criminal", etc., does not dispense with the application of due process standards.

(2). Where a criminal act is the basis of charges in such a "civil" proceeding, then the due process evidentiary standard to support a finding of guilt on such charges is proof beyond a reasonable doubt.

As to Charge Eight brought against petitioner J. ROBERT HUIE, it is patent that its basis was the criminal concept of perjury or subornation of perjury. The rule governing the qualitative standard of proof in such a case in Alabama is the civil rule, which rule was applied by the

Supreme Court of Alabama in making its finding of "guilty" on Charge Eight.

A distinction between *Winship* and the case at bar, which is apparent, is that in *Winship* there was an incarceration of the juvenile. Here the punishment was disbarment. It seems ultimately right, and constitutionally right, and which petitioner J. ROBERT HUIE does not hesitate to state, that this distinction is not a difference, so that, on this basis, a consideration of the problem could be avoided.

It can be emphazied further that the due process clause of the Fourteenth Amendment, United States Constitution, protects the loss of property as well as the loss of liberty. Those courts which have written to the concept of the right to practice law have recognized that the right is one constitutionally protected, *e.g.*, In re *Schlesinger*, 404 Pa 584, 182 A2d 835, 840 (1963), and within the concept of due process.

Furthermore, although the New York statute involved in *Winship* specifically stated a determination of juvenile delinquency did not affect any right to obtain any license, which is taken to mean that it could not be used, for instance, in denying a license to practice law, here in the case at bar, the determination of the criminal aspects under Charge Eight specifically resulted in the loss of the right to practice law. Thus, while there is not present any loss of liberty, there is an immediate loss of property. To be utterly realistic, disbarment is, in almost all cases, a more severe punishment than imprisonment, entailing, as it does, a public stigma of one not usually within the penumbra of criminal activity.

CONCLUSION

Given *Winship*, the full text of the due process clause of the Fourteenth Amendment, United States Constitution, and the actual operation of the judgment of the Supreme Court of Alabama, it is submitted sufficient grounds have been presented to the Court for the granting of a rehearing of its denial of the petition for writ of certiorari, and, also, the granting of the petition itself.

Respectfully submitted,

FRED BLANTON, JR., Esq.
Suite 1627
Twenty-One Twenty-One Building
Birmingham, Alabama 35203

Of counsel for Petitioner

CERTIFICATE

I, FRED BLANTON, JR., of counsel for J. ROBERT HUIE, petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that the above and foregoing petition for rehearing is presented in good faith and not for delay; and I further certify that the foregoing petition for rehearing is restricted to the grounds specified in the petition.

This the 10th day of July, 1970.

FRED BLANTON, JR., Esq.
Suite 1627
Twenty-One Twenty-One Building
Birmingham, Alabama 35203
Of counsel for Petitioner